IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10591 of 1995

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARTIYA AROGYA NIDHI - Petitioner(s)

Versus

SHANKARPURI GANGAPURI GOSAI - Respondent(s)

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Appearance :

MR KV GADHIA for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1.
MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 10/08/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the award dated 11.04.1995 passed by the Labour Court, Kalol, in

Reference (LCK) No. 176 of 1987, whereby the petitioner was directed to reinstate the respondent to his original post with full back wages.

2.0 The brief facts of the case are that the respondent herein was working as a Writer-cum-Clerk with the petitioner Trust. On 21.04.1986 the respondent was terminated from the service. Against the said action, the respondent raised a dispute, which, ultimately, culminated into a reference being Reference (LCK) No.176 of 1987. The Labour Court, after hearing the parties, passed the impugned award. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. While admitting the matter on 16.12.1995 this Court had stayed the implementation of the impugned award qua back wages only. It is stated that pursuant to the order of this Court, the respondent was reinstated in service and has, subsequently, retired from the service in the month of April 2002. Therefore, the only question which is required to be considered by this Court is with regard to the grant of back wages.

4.0 Having gone through the documents placed on record, it appears that the respondent himself has stayed away from the employment of the petitioner. No cogent reasons have been given by the Labour Court while awarding back wages to the respondent.

4.1 Moreover, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

4.2 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua granting the respondent back wages is required to be quashed and set aside.

5.0 For the foregoing reasons, this petition is partly allowed. The impugned award of the Labour Court qua

granting the respondent reinstatement with continuity in service is confirmed; and, the award qua granting back wages is quashed and set aside. It is made clear that the respondent shall be entitled for the benefits of continuity of service, i.e he shall be treated to be in continuous service from the date of his dismissal to his attaining the age of superannuation. The petitioner is also directed to pay the benefits of continuity of service from the date of the publication of the award till he attained the age of superannuation within a period of three months from the receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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